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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

In re:

THE WARNER COMPANY, INC.,
Debtor-in-Possession.

Case No. 11-60461-B-11

Chapter 11

DC No. KDG-2

Date: September 22, 2011

Time: 1:30 p.m.

Place: United States Bankruptcy Court
2500 Tulare Street, Fifth Floor
Department B, Courtroom 12
Fresno, California

Judge: Honorable W. Richard Lee

DECLARATION OF DONALD WOLFE IN SUPPORT OF MOTION FOR
ORDER AUTHORIZING DEBTOR TO
ASSUME EXECUTORY CONTRACT AND BORROW MONEY

I, DONALD WOLFE, declare:

1. I am the president and secretary of The Warner Company, Inc., Debtor in Possession in the above captioned proceeding ("Debtor").

2. Debtor commenced this Chapter 11 case by filing its Voluntary Petition under Chapter 11 of the Code on September 20, 2011. There is no Chapter 11 Trustee in this case and, therefore, Debtor is also the Debtor-in-Possession.

3. Debtor negotiated and entered a Consignment and Promotion Agreement ("the Consignment Agreement") with Marsden Brothers Promotions, Inc. ("MBP") before filing its

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1 allow Debtor to liquidate its existing, acquire additional inventory on a consignment basis and
2 borrow money sufficient to fund the Debtor's liquidation efforts in Chapter 11.

3 4. Debtor seeks authority to assume the Consignment Agreement and borrow
4 money from MBP for advertising and professional expenses as provided in the agreement.

5 5. Debtor entered into the Consignment Agreement with MBP that became
6 effective on August 31, 2011. The Consignment Agreement contemplates a two-stage
7 liquidation of the Debtor's assets that will last through January or 2012. Neither party had
8 completed their performance under the Consignment Agreement as of the petition date.

9 6. The primary terms of the Consignment Agreement are as follows:

10 a. MBP and Debtor shall jointly conduct a liquidation sale of the inventory of
11 Debtor.

12 b. MBP shall:

13 i. Advertise for the sale;

14 ii. Provide Debtor with a Sales Director and Assistant Director for the
15 sale;

16 iii. Advance up to \$100,000.00 for advertising and related costs with no
17 interest;

18 iv. Advance \$25,000.00 for legal fees with no interest; and

19 v. Consign inventory with Debtor and assist in procuring consignment
20 inventory from third parties for the sale;

21 c. Debtor shall:

22 i. Reimburse MBP for costs expended by MBP associated with the sale
23 with no interest;

24 ii. Work with MBP on its duties;

25 iii. Provide the sale facility; and

26 iv. Return unsold consigned inventory to its owners after the sale;

27 d. Consigned inventory shall remain property of the consignor, and shall not
28 become property of the estate or Debtor;

- e. MBP shall receive a 10% fee on the sale price of the inventory consigned by MBP or its vendors through mid-November 2012;
- f. Starting in mid-November, instead of the 10% fee, MBP shall receive a 12% fee on the sale of all of the merchandise and hard assets in the Debtor's business, consigned or otherwise, except on the sale of consigned, loose diamonds. MBP shall receive 24% of the gross profit for consigned, loose diamond sales;
- g. Additionally, Debtor shall pay MBP \$1,000.00 per week for MBP employees assisting with the sale on-site.

The forgoing summary is not a complete list of the terms of the Consignment Agreement. The complete terms of the agreement are found in the Consignment Agreement. A copy of the Consignment Agreement is attached as Exhibit "A" to the *Exhibits to Motion for Order Authorizing Debtor to Assume Executory Contract and Borrow Money* ("the Exhibits").

7. Debtor now seeks to assume the Consignment Agreement as a part of its Chapter 11 case. Debtor believes that a liquidation of its business through the use of MBP is in the best interest of its creditors. In addition, Debtor believes that liquidating through the planned sales events as outlined in the Consignment Agreement is the best method of maximizing the proceeds and profits for the benefit of creditors. The Debtor estimates that upon the conclusion of the liquidation sale, there will be approximately \$1,475,089 available to pay its creditors, including its largest creditor, Westamerica Bank.

8. Debtor is not in default of the Consignment Agreement and has performed all of the obligations required of its terms.

9. Debtor believes that no harm or prejudice will occur to any other party in interest if the *Motion for Order Authorizing Debtor to Assume Executory Contract and Borrow Money* filed by Debtor is granted.

10. Debtor believes it is in its best interest and the best interest of its Chapter 11 estate for Debtor to assume the Consignment Agreement because Debtor believes that it provides the foundation for the liquidation of Debtor's business on the terms that will be most

1 beneficial to creditors. If the Debtor's case were to be liquidated without the addition of new
2 inventory from MBP, the only creditor that would receive a distribution would be Westamerica.
3 Therefore, the Consignment Agreement should be assumed under Debtor's business judgment.

4 11. As necessary part of the Consignment Agreement, MBP has advanced fund for
5 the Debtor's attorney's Chapter 11 retainer in the amount of \$25,000.00, which occurred prior
6 to the commencement of this case. In addition, MBP has agreed to advance funds for
7 advertising and other necessary preparations for the sales events. Debtor does not have
8 sufficient money to pay the necessary costs for advertising and other preparations, which could
9 cost as much as \$100,000.00. The Consignment Agreement provides that MBP will advance
10 up to \$100,000.00 for the costs of the sale.

11 12. Debtor seeks authorization to borrow money from MBP as part of the
12 assumption of the Consignment Agreement through the Motion to meet its advertising and
13 preparation costs. MBP has agreed to provide up to \$100,000.00 to Debtor to finance the costs
14 of the sales. The advance will not be subject to interest. However, the advanced money is to
15 be repaid from Debtor's income after the "cost" of consigned items as an administrative
16 expense, but before other expenses. The money will be provided by MBP to Debtor after
17 Debtor has obtained Court approval to borrow the funds. Further details of the advance can be
18 found in the Consignment Agreement attached as Exhibit "A" to the Exhibits.

19 13. The terms under which Debtor is seeking approval to borrow funds from MBP
20 are reasonable because (a) no interest will be charged, (b) Debtor will be able to make
21 payments to MBP from the proceeds of the sales events, and (c) Debtor will be able to liquidate
22 its business through a large sales event and generate more income than it otherwise would be
23 able to through the liquidation proceeds described in the Consignment Agreement.

24 14. There will be prejudice to Debtor and Debtor's creditors if the Motion is denied
25 because Debtor will have insufficient funds to operate, generate a profit, and repay their
26 creditors. Therefore, it is in all parties' best interests to grant the Motion.

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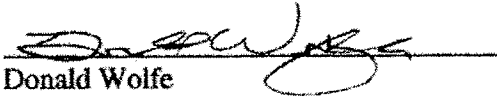
1 14. There will be prejudice to Debtor and Debtor's creditors if the Motion is denied
2 because Debtor will have insufficient funds to operate, generate a profit, and repay their
3 creditors. Therefore, it is in all parties' best interests to grant the Motion.

4 15. There will be sufficient proceeds from the sales of inventory to repay MBP.
5 Debtor believes that it will generate gross revenues of about \$5,800,000.00 if Debtor is able to
6 assume the Consignment Agreement and conduct the sales events provided for therein.

7 16. Debtor believes that the terms for borrowing the advance are the best terms
8 possible.

9 17. The foregoing statements are within my personal knowledge and I can testify
10 competently thereof if called as a witness.

11 I so declare under penalty of perjury this 21 day of September, 2011.

12
13 
14 Donald Wolfe